

AMENDED IN SENATE JUNE 18, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 2194

Introduced by Assembly Member Mullin

February 20, 2014

An act to amend ~~Section 53313~~ *Sections 53313 and 53313.5* of the Government Code, relating to local government.

LEGISLATIVE COUNSEL’S DIGEST

AB 2194, as amended, Mullin. Mello-Roos Community Facilities Act of 1982 *storm water*.

The Mello-Roos Community Facilities Act of 1982 authorizes a community facilities district to finance various services, including, but not limited to, flood and storm protection services, as specified.

This bill would additionally authorize the financing of storm water management.

The act also authorizes a community facilities district to finance the purchase, construction, expansion, improvement, or rehabilitation of certain facilities, including, among others, undergrounding of water transmission and distribution facilities.

This bill would authorize a community facilities district to finance the acquisition, improvement, rehabilitation, or maintenance of any publicly owned real or other tangible property for local agencies’ compliance with storm water management permits.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 53313 of the Government Code is amended to read:

53313. A community facilities district may be established under this chapter to finance any one or more of the following types of services within an area:

(a) Police protection services, including, but not limited to, criminal justice services. However, criminal justice services shall be limited to providing services for jails, detention facilities, and juvenile halls.

(b) Fire protection and suppression services, and ambulance and paramedic services.

(c) Recreation program services, library services, maintenance services for elementary and secondary schoolsites and structures, and the operation and maintenance of museums and cultural facilities. A special tax may be levied for any of the services specified in this subdivision only upon approval of the registered voters as specified in subdivision (b) of Section 53326. An election to enact a special tax for recreation program services, library services, and the operation and maintenance of museums and cultural facilities may be conducted pursuant to subdivision (c) of Section 53326.

(d) Maintenance and lighting of parks, parkways, streets, roads, and open space.

(e) Flood, storm protection services, and storm water management, including, but not limited to, *local agencies'* compliance with state and federal storm water permit requirements, the operation and maintenance of storm drainage systems, plowing and removal of snow, and sandstorm protection systems.

(f) Services with respect to removal or remedial action for the cleanup of any hazardous substance released or threatened to be released into the environment. As used in this subdivision, the terms "remedial action" and "removal" shall have the meanings set forth in Sections 25322 and 25323, respectively, of the Health and Safety Code, and the term "hazardous substance" shall have the meaning set forth in Section 25281 of the Health and Safety Code. Community facilities districts shall provide the State Department of Health Care Services and local health and building departments with notification of any cleanup activity pursuant to

1 this subdivision at least 30 days prior to commencement of the
2 activity.

3 (g) Maintenance and operation of any real property or other
4 tangible property with an estimated useful life of five or more
5 years that is owned by the local agency or by another local agency
6 pursuant to an agreement entered into under Section 53316.2.

7 A community facilities district tax approved by vote of the
8 landowners of the district may only finance the services authorized
9 in this section to the extent that they are in addition to those
10 provided in the territory of the district before the district was
11 created. The additional services shall not supplant services already
12 available within that territory when the district was created.

13 Bonds shall not be issued pursuant to this chapter to fund any
14 of the services specified in this section, although bonds may be
15 issued to fund capital facilities to be used in providing these
16 services.

17 *SEC. 2. Section 53313.5 of the Government Code is amended*
18 *to read:*

19 53313.5. A community facilities district may also finance the
20 purchase, construction, expansion, improvement, or rehabilitation
21 of any real or other tangible property with an estimated useful life
22 of five years or longer or may finance planning and design work
23 that is directly related to the purchase, construction, expansion, or
24 rehabilitation of any real or tangible property. The facilities need
25 not be physically located within the district. A district may not
26 lease out facilities that it has financed except pursuant to a lease
27 agreement or annexation agreement entered into prior to January
28 1, 1988. A district may only finance the purchase of facilities
29 whose construction has been completed, as determined by the
30 legislative body, before the resolution of formation to establish
31 the district is adopted pursuant to Section 53325.1, except that a
32 district may finance the purchase of facilities completed after the
33 adoption of the resolution of formation if the facility was
34 constructed as if it had been constructed under the direction and
35 supervision, or under the authority of, the local agency that will
36 own or operate the facility. For example, a community facilities
37 district may finance facilities, including, but not limited to, the
38 following:

39 (a) Local park, recreation, parkway, and open-space facilities.

1 (b) Elementary and secondary schoolsites and structures
2 provided that the facilities meet the building area and cost standards
3 established by the State Allocation Board.

4 (c) Libraries.

5 (d) Child care facilities, including costs of insuring the facilities
6 against loss, liability insurance in connection with the operation
7 of the facility, and other insurance costs relating to the operation
8 of the facilities, but excluding all other operational costs. However,
9 the proceeds of bonds issued pursuant to this chapter shall not be
10 used to pay these insurance costs.

11 (e) The district may also finance the construction or
12 undergrounding of water transmission and distribution facilities,
13 natural gas pipeline facilities, telephone lines, facilities for the
14 transmission or distribution of electrical energy, and cable
15 television lines to provide access to those services to customers
16 who do not have access to those services or to mitigate existing
17 visual blight. The district may enter into an agreement with a public
18 utility to utilize those facilities to provide a particular service and
19 for the conveyance of those facilities to the public utility. "Public
20 utility" shall include all utilities, whether public and regulated by
21 the Public Utilities Commission, or municipal. If the facilities are
22 conveyed to the public utility, the agreement shall provide that the
23 cost or a portion of the cost of the facilities that are the
24 responsibility of the utility shall be refunded by the public utility
25 to the district or improvement area thereof, to the extent that
26 refunds are applicable pursuant to (1) the Public Utilities Code or
27 rules of the Public Utilities Commission, as to utilities regulated
28 by the commission, or (2) other laws regulating public utilities.
29 Any reimbursement made to the district shall be utilized to reduce
30 or minimize the special tax levied within the district or
31 improvement area, or to construct or acquire additional facilities
32 within the district or improvement area, as specified in the
33 resolution of formation.

34 (f) (1) The district may also finance the acquisition,
35 improvement, rehabilitation, or maintenance of any real or other
36 tangible property, whether privately or publicly owned, for flood
37 and storm protection services, including, but not limited to, storm
38 drainage and treatment systems and sandstorm protection systems.

39 (2) *The district may also finance the acquisition, improvement,*
40 *rehabilitation, or maintenance of any publicly owned real or other*

1 *tangible property for local agencies' compliance with storm water*
2 *management permits.*

3 (g) The district may also pay in full all amounts necessary to
4 eliminate any fixed special assessment liens or to pay, repay, or
5 defease any obligation to pay or any indebtedness secured by any
6 tax, fee, charge, or assessment levied within the area of a
7 community facilities district or may pay debt service on that
8 indebtedness. When the amount financed by the district is to pay
9 a tax, fee, charge, or assessment imposed by a public agency other
10 than the one conducting the proceedings, and if the amount
11 provided to the other public agency will not be entirely used to
12 pay off or prepay an assessment lien or special tax obligation
13 pursuant to the property owner's legal right to do so, the written
14 consent of the other public agency is required. In addition, tax
15 revenues of a district may be used to make lease or debt service
16 payments on any lease, lease-purchase contract, or certificate of
17 participation used to finance facilities authorized to be financed
18 by the district.

19 (h) Any other governmental facilities that the legislative body
20 creating the community facilities district is authorized by law to
21 contribute revenue to, or construct, own, or operate. However, the
22 district shall not operate or maintain or, except as otherwise
23 provided in subdivisions (e) and (k), have any ownership interest
24 in any facilities for the transmission or distribution of natural gas,
25 telephone service, or electrical energy.

26 (i) (1) A district may also pay for the following:

27 (A) Work deemed necessary to bring buildings or real property,
28 including privately owned buildings or real property, into
29 compliance with seismic safety standards or regulations. Only
30 work certified as necessary to comply with seismic safety standards
31 or regulations by local building officials may be financed. No
32 project involving the dismantling of an existing building and its
33 replacement by a new building, nor the construction of a new or
34 substantially new building may be financed pursuant to this
35 subparagraph. Work on qualified historical buildings or structures
36 shall be done in accordance with the State Historical Building
37 Code (Part 2.7 (commencing with Section 18950) of Division 13
38 of the Health and Safety Code).

39 (B) In addition, within any county or area designated by the
40 President of the United States or by the Governor as a disaster area

1 or for which the Governor has proclaimed the existence of a state
2 of emergency because of earthquake damage, a district may also
3 pay for any work deemed necessary to repair any damage to real
4 property directly or indirectly caused by the occurrence of an
5 earthquake cited in the President's or the Governor's designation
6 or proclamation, or by aftershocks associated with that earthquake,
7 including work to reconstruct, repair, shore up, or replace any
8 building damaged or destroyed by the earthquake, and specifically
9 including, but not limited to, work on any building damaged or
10 destroyed in the Loma Prieta earthquake that occurred on October
11 17, 1989, or by its aftershocks. Work may be financed pursuant
12 to this subparagraph only on property or buildings identified in a
13 resolution of intention to establish a community facilities district
14 adopted within seven years of the date on which the county or area
15 is designated as a disaster area by the President or by the Governor
16 or on which the Governor proclaims for the area the existence of
17 a state of emergency.

18 (2) Work on privately owned property, including reconstruction
19 or replacement of privately owned buildings pursuant to
20 subparagraph (B) of paragraph (1), may only be financed by a tax
21 levy if all of the votes cast on the question of levying the tax, vote
22 in favor of levying the tax, or with the prior written consent to the
23 tax of the owners of all property that may be subject to the tax, in
24 that case the prior written consent shall be deemed to constitute a
25 vote in favor of the tax and any associated bond issue. Any district
26 created to finance seismic safety work on privately owned
27 buildings, including repair, reconstruction, or replacement of
28 privately owned buildings pursuant to this subdivision, shall consist
29 only of lots or parcels that the legislative body finds have buildings
30 that were damaged or destroyed by the earthquake cited pursuant
31 to subparagraph (B) of paragraph (1) or by the aftershocks of that
32 earthquake.

33 (j) A district may also pay for the following:

34 (1) Work deemed necessary to repair and abate damage caused
35 to privately owned buildings and structures by soil deterioration.
36 "Soil deterioration" means a chemical reaction by soils that causes
37 structural damage or defects in construction materials including
38 concrete, steel, and ductile or cast iron. Only work certified as
39 necessary by local building officials may be financed. No project
40 involving the dismantling of an existing building or structure and

1 its replacement by a new building or structure, nor the construction
2 of a new or substantially new building or structure may be financed
3 pursuant to this paragraph.

4 (2) Work on privately owned buildings and structures pursuant
5 to this subdivision, including reconstruction, repair, and abatement
6 of damage caused by soil deterioration, may only be financed by
7 a tax levy if all of the votes cast on the question of levying the tax
8 vote in favor of levying the tax. Any district created to finance the
9 work on privately owned buildings or structures, including
10 reconstruction, repair, and abatement of damage caused by soil
11 deterioration, shall consist only of lots or parcels on which the
12 legislative body finds that the buildings or structures to be worked
13 on pursuant to this subdivision suffer from soil deterioration.

14 (k) A district may also finance the acquisition, improvement,
15 rehabilitation, or maintenance of any real or other tangible property,
16 whether privately or publicly owned, for the purposes of removal
17 or remedial action for the cleanup of any hazardous substance
18 released or threatened to be released into the environment. As used
19 in this subdivision, “remedial action” and “removal” shall have
20 the meaning set forth in Sections 25322 and 25323, respectively,
21 of the Health and Safety Code, and “hazardous substance” shall
22 have the meaning set forth in Section 25281 of the Health and
23 Safety Code.

24 (l) A district may also finance and refinance the acquisition,
25 installation, and improvement of energy efficiency, water
26 conservation, and renewable energy improvements that are affixed,
27 as specified in Section 660 of the Civil Code, to or on real property
28 and in buildings, whether the real property or buildings are
29 privately or publicly owned. Energy efficiency, water conservation,
30 and renewable energy improvements financed by a district may
31 only be installed on a privately owned building and on privately
32 owned real property with the prior written consent of the owner
33 or owners of the building or real property. This chapter shall not
34 be used to finance installation of energy efficiency, water
35 conservation, and renewable energy improvements on a privately
36 owned building or on privately owned real property in connection
37 with the initial construction of a residential building unless the
38 initial construction is undertaken by the intended owner or
39 occupant.

1 (m) Any improvement on private property authorized to be
2 financed by this section shall constitute a “public facility” for
3 purposes of this chapter and a “public improvement” for purposes
4 of Part 1 (commencing with Section 3100) and Part 2 (commencing
5 with Section 3110) of Division 4.5 of the Streets and Highways
6 Code, whether the improvement is owned by a private entity, if
7 the legislative body has determined that the improvement provides
8 a public benefit, or the improvement is owned by a public agency.

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